

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARK DAVID CHANLEY,

Defendant.

Case No. 2:07-cr-150-LDG (RJJ)

ORDER

The defendant, Mark Chanley, moves for a judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29(c) (#180). The government opposes the motion (#183), and Chanley has filed his reply (#184).

Pursuant to Rule 29(c), a defendant may renew a motion for acquittal within 14 days after a guilty verdict. Chanley timely moved for a judgment of acquittal pursuant to Rule 29(a), which the court denied. Pursuant to Rule 29(a), "the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." The court denied Chanley's Rule 29(a) motion after considering the evidence in the light most favorable to the Government and finding that a rational trier of fact could find each element of each crime beyond a reasonable doubt.

1 Further, Chanley elected to have this matter tried to the court and he timely moved
2 pursuant to Rule 23(c) for specific findings of fact. The court found that the government
3 proved each element of each crime beyond a reasonable doubt after carefully and
4 impartially considering all of the evidence as the trier of fact.

5 Chanley's Rule 29(c) motion necessarily requires the court to again consider the
6 evidence in the light most favorable to the government and to again determine whether a
7 rational trier of fact would find each element of each crime beyond a reasonable doubt.

8 The court will deny the renewed motion for acquittal.

9 **Receipt of Child Pornography**

10 To convict Chanley of receipt of child pornography, the government has the burden
11 of showing that Chanley (a) knowingly received (b) any child pornography or any material
12 that he knew contained child pornography (c) that was mailed, shipped, transported in, or
13 affected interstate or foreign commerce by any means, including by computer (hereinafter,
14 the interstate nexus). The totality of the evidence, when considered as a whole,
15 established beyond a reasonable doubt that, within the five-year statute of limitations,
16 Chanley knowingly received images of child pornography having an interstate nexus.

17 **Possession of Child Pornography**

18 To convict Chanley of possession of child pornography, the government had the
19 burden of showing that Chanley (a) knowingly possessed (b) any child pornography or any
20 material that he knew contained child pornography (c) that was mailed, shipped,
21 transported in, or affected interstate or foreign commerce by any means, including by
22 computer, or was produced using materials mailed, shipped, or transported in, or affected
23 interstate or foreign commerce by any means, including by computer (hereinafter the
24 interstate nexus for possession). The totality of the evidence, when considered as a whole,
25 established beyond a reasonable doubt that, within the five-year statute of limitations,
26 Chanley knowingly possessed images of child pornography having an interstate nexus.

1 **Double Jeopardy**

2 Chanley's double jeopardy argument fails for two reasons. First, this court entered a
3 judgment of conviction only as to Count 1 of the Indictment. Second, Chanley's judgment
4 of conviction for the greater offense does not entitle him to a judgment of acquittal for the
5 lesser-included offense. In *United States v. Davenport*, 519 F.3d 940, 948 (9th Cir. 2008),
6 the Ninth Circuit remanded with instructions to vacate the "conviction on one of the two
7 counts, allowing for it to be reinstated without prejudice if his other conviction should be
8 overturned on direct or collateral review " (emphasis added). The Ninth Circuit's instruction
9 to vacate a conviction *without prejudice* to it being reinstated necessarily establishes that
10 the defendant was not acquitted of the lesser-included offense by reason of his conviction
11 for the greater offense.

12 Accordingly, for good cause shown,

13 **THE COURT ORDERS** that Mark David Chanley's Rule 29(c) Motion for Judgment
14 of Acquittal is DENIED.

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16 DATED this 12 day of August, 2010.

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20 Lloyd D. George
21 United States District Judge
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